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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,898	11/28/2000	Leroy Hood	P-IS 4403	7808
23601	7590	03/16/2004	EXAMINER	
CAMPBELL & FLORES LLP 4370 LA JOLLA VILLAGE DRIVE 7TH FLOOR SAN DIEGO, CA 92122			ZEMAN, MARY K	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SM.

Office Action Summary

Application No.

09/724,898

Applicant(s)

HOOD ET AL.

Examiner

Mary K Zeman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6-32,58-65,70-90,95-104 and 135-153 is/are pending in the application.
- 4a) Of the above claim(s) 17-32,58-64,135-137,140,142 and 143 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-16,65,70-90,95-104,138,139,141 and 144-153 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/5/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, 6-32, 58-65, 70-90, 95-104, 135-143 and 144-153 are pending in this application. Claims 17-32, 58-64, 135-137, 140, 142 and 143 stand withdrawn from consideration as being drawn to a non-elected invention. Claims 1, 6-16, 65, 70-90, 95-104, 138, 139, 141 and 144-153 are under examination. Claims 144-153 are newly added.

This application contains claims 17-32, 58-64, 135-137, 140, 142 and 143 drawn to an invention nonelected with traverse in Paper No. 9. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The information disclosure statement filed 1/5/04 has been entered and considered. An initialed copy of the form PTO-1449 is included with this action.

Applicant's arguments filed 1/5/04 have been fully considered but they are not persuasive. Any rejection not reiterated below has been withdrawn.

Rejections maintained

Claims 1, 6-16, 65, 70-90, 95-104, 138, 139, 141 remain rejected and new claims 144-153 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention for the reasons set forth in the previous office action. *To the extent this rejection is newly applied, it is necessitated by Applicant's amendment.*

Applicant's arguments assert that the generic teachings of the specification are sufficient for enablement. Applicant's response fails to address the points of the Examiner's rejection as to why the generic teachings are not sufficient, and the other Wands' factors detailing the Examiner's position as to why the specification is not enabling for the claims. As such, these arguments are not persuasive. New claims 144-153 are not enabled for the same reasons.

Claims 1, 6-16, 65, 70-90, 95-104, 138, 139, 141 remain rejected and new claims 144-153 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

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particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the independent claims (1, 65, 81, 90, 105, 138, 141 and new claim 144) the metes and bounds of the steps set forth are unclear. Steps such as “comparing” and “determining” without concrete, specific limitations as to how they are to be performed are not descriptive of the method intended to be claimed.

Applicant argues that the specification sets forth several ways each of the steps mentioned above could be performed. These limitations are not present in the claims, and while one reads the claims in light of the specification, one cannot read limitations into the claims. As such, the claims do not recite positive active steps as to how the methods are actually to be performed.

Claims 1, 6-16, 65, 70-90, 95-104, 138, 139, 141 remain rejected and new claims 144-153 are rejected under 35 U.S.C. 102(e) as being anticipated by Friend et al. (US 6,324,479 B1) for the reasons set forth in the previous office action. *To the extent this rejection is newly applied, it is necessitated by Applicant's amendments.*

Applicant argues that Friend does not provide multidimensional coordinate points. Applicant is pointed to Figures 1-3, and columns 9-18, setting forth such multidimensional coordinate points and how they are determined. They appear to be the same as those being claimed, and meet the limitations of the rejected claims. Applicant further argues that Friend does not teach leukocyte specimens. It is noted that none of claims 1, 6-16, 65, 70-90, 95-104, 139, 139 and 141 recite leukocyte specimens. Only new claims 144-153 have such a requirement. Even so, Friend's disclosure of use of white blood cells (T cells, column 23) is a disclosure of leukocytes, as they are one and the same.

Claims 1, 6-16, 65, 70-90, 95-104, 138, 139, 141 remain rejected and new claims 144-153 are rejected under 35 U.S.C. 102(e) as being anticipated by Friend et al. (US 2001/0018182 A1) for the reasons set forth in the previous office action. *To the extent this rejection is newly applied, it is necessitated by Applicant's amendments.*

Applicant argues that Friend does not provide multidimensional coordinate points. Applicant is pointed to Figures 1-3, and pages 5-11, setting forth such multidimensional coordinate points and how they are determined. They appear to be the same as those being claimed, and meet the limitations of the rejected claims. Applicant further argues that Friend does not teach leukocyte specimens. It is noted that none of claims 1, 6-8, 10-16, 65, 70-72, 74-82, 84-90, 95-96, 98-104, 139, 139 and 141 recite leukocyte specimens. Only dependent claims 9, 73, 83 and 97, and new claims 144-153 have such a requirement. Even so, Friend's disclosure of use of leukemias (Table 1) is a disclosure of leukocytes, as they are one and the same.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary K Zeman whose telephone number is (571) 272 0723.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P Woodward can be reached on (571) 272 0722. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MARY K. ZEMAN
PRIMARY EXAMINER
Sub 31
3/12/04